

REMARKS

At the outset, the Applicant thanks the Examiner for the thorough review and consideration of the subject application. The Non-Final Office Action of August 13, 2003 has been received and its contents carefully reviewed.

In the Office Action, the Examiner rejected claims 1-21 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is respectfully traversed and reconsideration of the claims is requested in view of the following remarks.

With respect to claim 1, and claims 2-8 which depend from claim 1, the Examiner states that the claim language “wherein said second mirror includes deep elemental traps that form a current confinement structure in said second mirror” fails to define the structure necessary to accomplish the intended result; thus, it is not clear what structure the Applicant intends to claim. The Applicant respectfully disagrees.

According to M.P.E.P. § 2173.02, the test for definiteness under 35 U.S.C. § 112, second paragraph, is whether those skilled in the art would understand what is claimed when the claim is read in light of the specification. The second mirror recited in claim 1 expressly includes “elemental traps” which form a current confinement structure. This is a definitive structural feature clearly illustrated in Figure 2. Moreover, the specification explains how and why this feature provides the desired result. For example, the Applicant respectfully refers the examiner to pages 5-6, paragraphs 13 and 14, and page 10, paragraphs 30-32.

With respect to claim 9, as well as claims 10-15 which depend from claim 9, the Examiner states that the claim language “wherein said spacer includes deep elemental traps that form a current confinement structure” fails to define the structure necessary to accomplish the intended result. Again, the Applicant respectfully disagrees. The “spacer” and the “elemental traps” that form the current confinement structure, as recited in claim 9, are definitive structural features that are clearly depicted in the exemplary vertical cavity surface emitting laser of Figure 2. And, once again, the specification clearly explains the how and why these features provide the desired result (see e.g., pages 5-6, paragraphs 14 and 15; and page 10, paragraphs 30-32).

With respect to claim 16, and claims 17-21 which depend there from, the Examiner states that the claim language “wherein said array includes a plurality of deep elemental trap regions that form current confinement structures that guide current from said plurality of second contact layers into said plurality of active regions” fails to define the structure necessary to accomplish the intended result. The “elemental traps” that form the current confinement structures, the plurality of “second contact layers” and the plurality of “active regions” are definitive structural features which are clearly illustrated in the exemplary vertical cavity surface emitting laser depicted in Figure 2, where it is understood from the specification that the vertical cavity surface emitting laser illustrated in Figure 2 may be one of a plurality of vertical cavity surface emitting laser elements that make up a vertical cavity surface emitting laser array. It is also clear from the specification that the aforementioned structural features provide the desired result (see e.g., pages 5-6, paragraphs 14 and 15; and page 10, paragraphs 30-32).

For at least those reasons set forth above, the Applicant respectfully contends that claims 1-21 fully comply with the requirements of 35 USC § 112. Accordingly, the Applicant requests that the Examiner withdraw his rejection.

Notwithstanding the propriety of the Examiner’s rejection of claims 1-21 under 35 USC § 112, second paragraph, the Applicant respectfully contends that each of claims 1-21 must still be considered in view of any pertinent prior art. According to MPEP § 2143.03, claims that are deemed indefinite cannot be disregarded. All limitations of the claims must be considered and given weight even when the claims can be subject to more than one interpretation.

In view of the remarks above, each of the presently pending claims is believed to be in immediate condition for allowance. Notice of same is earnestly solicited. If the Examiner has any questions, he is encouraged to contact the undersigned at the telephone number provided below.

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Respectfully submitted,

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